IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.13415 of 2004**

DATE OF DECISION: December 4, 2006

RAM KUMAR ...PETITIONER

VERSUS

THE SUPERINTENDING CANAL OFFICER & ORS. ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MRS. JUSTICE NIRMAL YADAV.

PRESENT: MR. SHAILENDRA JAIN, ADVOCATE FOR THE PETITIONERS.
MR. R.S. KUNDU, ADDL.A.G., HARYANA.
MR. ASHOK VERMA, ADVOCATE FOR RESPONDENT NO.5.

ASHUTOSH MOHUNTA, J. (ORAL)

The petitioner has impugned the order, Annexure P-12 passed by the Divisional Canal Officer, Hisar Water Services Division, Hisar dated 17.7.2004, by which the Divisional Canal Officer has held that the orders passed by the Superintending Canal Officer are ultra vires of the Canal Act because according to the said authority cases with regard to restoration of the water courses are appealable before the High Court only.

A perusal of the impugned orders shows that a lower authority cannot set aside the orders passed by the higher authority by holding them to be illegal or ultra vires. In the present case, the Divisional Canal Officer who is the authority junior to the Superintending Canal Officer cannot set aside or ignore the orders passed by the superior authority. On this ground itself, the orders, Annexure P-12 are liable to be set aside.

Even otherwise, as per the provisions of sub Section 3 of Section 2 of the Haryana Canal and Drainage Act, the orders passed by the Divisional Canal Officer are revisable before the Superintending Canal Officer or the Chief Canal Officer and it is in exercise of these powers that the matters had earlier been remanded by the Superintending Canal Officer. Thus, we allow the writ petition and set aside the order, Annexure P-12. The Divisional Canal Officer shall decide the matter afresh on merits. Parties are directed to appear before the Divisional Canal Officer, Hisar on 23.1.2007.

(ASHUTOSH MOHUNTA)
JUDGE

December 4, 2006
Gulati

(NIRMAL YADAV)
JUDGE